



Mexico: Human Rights Watch Submission to the UN Committee on the Rights of Persons with Disabilities

This memorandum, submitted to the United Nations Committee on the Rights of Persons with Disabilities (“the Committee”), ahead of its review on Mexico, highlights areas of concern that Human Rights Watch hopes will inform the Committee’s consideration of the Mexican government’s compliance with the Convention on the Rights of Persons with Disabilities (“CRPD”).

This submission draws primarily on Human Rights Watch’s research and advocacy in Mexico from 2019 to 2021 on the rights of people with disabilities to be protected from family violence and provided with support to live independently and be included in the community, ensured access to justice and to support services, and guaranteed their legal capacity to the right to access adequate healthcare.

This submission also briefs the Committee on developments related to the reform to amend Mexico’s General Health Act as it relates to disability rights.

The issues covered here relate to CRPD articles 4, 5, 7, 9, 12, 13, 14, 15, 16, 17, 19, 25, and 31.

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1. Overview.....	4
2. Obstacles to Accessing Justice and Obtaining Protection for Victims with Disabilities	4
Obstacles to Reporting Crimes.....	4
Obstacles to Accessing Protection Measures and Shelters for Survivors of Family Violence.....	6
Insufficient Procedural Accommodations.....	6
3. Lack of Support for Independent Living in the Community and Family Violence.....	8
4. Lack of Disaggregated Data on People with Disabilities who are Victims of Family Violence	9
5. Informed Consent and Medical Treatment	10
6. Shackling of Persons with Psychosocial Disabilities.....	11

1. Overview

Between 2018 and 2019, Human Rights Watch documented violence committed by family members against people with disabilities in Mexico, specifically in four Mexican states: Oaxaca, Jalisco, Nuevo León, and Mexico City and published the report “Better to Make Yourself Invisible”: Family Violence against People with Disabilities in Mexico, in 2020.¹

Human Rights Watch’s research, based on interviews with people with disabilities, government officials, and experts on family violence, as well as written information from public prosecutors and others, found that people with disabilities can experience abuse such as physical violence, sexual violence, psychological abuse, neglect, confinement, shackling, and threats. We documented abuse against adults by their parents, stepparents, in-laws, and other relatives, such as uncles, as well as cases of men who abused their wives. Some adults who live with their parents had been abused since childhood.

People with disabilities who are victims of family violence face obstacles to reporting crimes; accessing protective measures, including shelters for survivors of family violence, and participating in law enforcement proceedings on an equal basis with others.

2. Obstacles to Accessing Justice and Obtaining Protection for Victims with Disabilities

Obstacles to Reporting Crimes

People with disabilities in Mexico can be isolated, confined, and forced to depend on their families economically and for support in basic needs, as well as for transportation and other services. People may have little opportunity to contact individuals outside of the home, let alone go to the prosecutor’s office to pursue a complaint for alleged abuse.

Those who manage to access a prosecutor’s office frequently encounter insufficient accommodations and support to enable people with disabilities to enter complaints and meet confidentially with police and investigators. Officials from prosecutors’ offices in states where Human Rights Watch conducted research had limited knowledge and experience in implementing procedural accommodations for people with disabilities who may need support or adjustments when filing complaints during the investigation, or in criminal proceedings.

Under some Mexican state criminal codes, including those in Oaxaca, Jalisco, and Nuevo León, anyone who has knowledge about family violence can report an alleged crime to prosecutors.² In some states, such as Mexico City, the alleged adult victim must report the crime to the prosecutor’s office, except when the alleged family violence involves a victim with a disability.³ In all of these states, once a prosecutor opens an investigation, the victim must go to the prosecutor’s office to confirm the report. For many people with disabilities, particularly those with high support needs forced to rely on their families, visiting a prosecutor’s office is

1 Human Rights Watch, “*Better to Make Yourself Invisible*”: Family Violence Against People with Disabilities in Mexico, June 2020, <https://www.hrw.org/report/2020/06/04/better-make-yourself-invisible/family-violence-against-people-disabilities-mexico>.

2 Oaxaca Criminal Code, art. 404; Jalisco Criminal Code, art. 176; and Nuevo León Criminal Code, art. 287.

3 Mexico City Criminal Code, art. 200 bis.

impossible because the victims are under their families' control or lack access to transportation, including money to pay for transportation. Prosecutors do not visit alleged victims at home. If a victim fails to visit the prosecutor's office, this can be grounds for closing an investigation and dismissing the case.

In some Mexican states, victims of family violence can initially report a crime online. Ultimately the alleged victim must go to the prosecutor's office in person to confirm the report. For example, in a November 2019 letter to Human Rights Watch, the Nuevo León state prosecutor told Human Rights Watch that people with disabilities could report crime through the prosecutor's office's website.⁴

However, a Human Rights Watch researcher with expertise in accessibility tested the system and found that, while an official did respond through the website, the system is not fully accessible. For people with sensory disabilities the online system did not meet current international best-practice guidelines on webpage accessibility, including on text location, prerecorded sign language messages, image captions, and text size.⁵ To contact a prosecutor, the system requires a user to have an email account and enter personal information, receive a code via email and enter it on the webpage. After this, an officer responds and asks about the crime the user wants to report.

A Human Rights Watch researcher followed these steps and made a request to the responding officer for sign language interpretation. The officer responded that sign language was only available if the complaint is made in person.⁶ Human Rights Watch called a second time and asked about the procedure for a person with a physical disability and was told that while the initial report could be done online, the person needed to go to the prosecutor office for investigation follow up; officials do not make home visits.⁷

Physical accessibility of prosecutors' offices in Mexico can also be a significant barrier. Central prosecutors' offices in the four states visited in our research did not have accessible main entrances. In Oaxaca, a wheelchair user must enter the building by using a steep ramp at the back door of the office adjacent to a parking lot. In Nuevo León and Mexico City, wheelchair users are required to enter through a service door at the back of the buildings where there is a ramp. In Jalisco, wheelchair users can only access the ground floor because there are no elevators.⁸ One further obstacle to reporting crimes is the reluctance of service providers for people with disabilities to report crimes. They can be reluctant to report cases of known or suspected family violence to prosecutors out of fear that the government's response might not be sufficient, or in the best interest of the victim. Many fear the justice system would not act swiftly and effectively

4 Letter from Griselda Nuñez, special prosecutor for the protection of women victims of violence, Nuevo León Prosecutor's Office, to Human Rights Watch, November 11, 2019.

5 "Web Content Accessibility Guidelines (WCAG) 2.1," <https://www.w3.org/TR/WCAG/> (accessed January 9, 2020)

6 Human Rights Watch researcher telephone call to the Nuevo León online crime reporting system, December 12, 2019.

7 *Ibid.*

8 Human Rights Watch interview with Alejandro Góngora Montejano, acting human rights director for the prosecutor's office in Jalisco, Guadalajara, March 21, 2019; Human Rights Watch interview with Griselda Nuñez, special prosecutor for the protection of women victims of violence, Nuevo León, April 9, 2019; Human Rights Watch interview with Rubén Vasconcelos, state prosecutor of Oaxaca, Oaxaca, November 20, 2019; Human Rights Watch interview with Claudia Violeta Azar Cruz, family court prosecutor, Mexico City, November 21, 2019.

to protect victims, placing them at risk of further violence or being victims of retaliation. In the context of education service providers, professors fear that if they report violence, neglect or abuse, parents will cease taking children to school, leaving them further exposed to violence.

Obstacles to Accessing Protection Measures and Shelters for Survivors of Family Violence

For people with high support requirements who depend on an alleged perpetrator economically or for essential daily activities, such as bathing, eating, or using the toilet, basic protection measures can be difficult or impossible to implement.

Mexican law defines shelters for women who are victims of family violence as “spaces which are confidential, safe, temporary, and free [of charge].” They provide psychological, educational, health, legal, and social work services for women and their children who have been victims of violence in a domestic setting.⁹

According to official data more than 80 percent of emergency shelters are not accessible for women with disabilities.¹⁰ There are no emergency shelters for men with disabilities, who can also be victims of violence, Human Rights Watch documented. The government does not provide services such as personal assistants for victims of domestic violence who have high support needs. This makes a protection measure like separation of the alleged perpetrator and victim difficult or impossible to implement in practice.

The General Act to Ensure Women a Life Free of Violence does not include specific reference to women with disabilities or accessibility and accommodations women with disabilities might require to access justice and protection measures on an equal basis with others. In November 2021, the Mexican Senate passed an amendment to this act to incorporate a guiding principle for the issuing of protective measures and specific obligations for shelters to be accessible for women with disabilities. The reform is still pending approval by the lower house. The lower house should expedite the process for the adoption of the amendments.¹¹

Insufficient Procedural Accommodations

Mexico’s federal and state legal systems recognize and define family violence. However, not all laws reference people with disabilities or ensure accessibility and procedural accommodations. Mexico’s criminal law and all 32 state criminal codes criminalize family violence.¹²

⁹ General Law on Women's Access to a Life Free of Violence, art. 8, VI.

¹⁰ National Institute for Women (INMUJERES), “Shelters for Women, Their Daughters and Sons in Situations of Violence: An Assessment Based on Data from the Census of Social Assistance Housing” (“Refugios para mujeres, sus hijas e hijos en situación de violencia: un diagnóstico a partir de los datos del Censo de Alojamientos de Asistencia Social”), 2015, http://cedoc.inmujeres.gob.mx/documentos_download/101267.pdf (accessed January 28, 2020), p. 10.

¹¹ Cámara de Senadores. *Proyecto de decreto por el que se reforman y adicionan diversas disposiciones de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, via: https://www.senado.gob.mx/64/gaceta_del_senado/documento/122000.

¹² With some variations, state criminal codes define family violence as any type of physical, psycho-emotional, sexual, economic, or reproductive rights violence occurring inside or outside the household against a partner, former partner, children, parents, grandparents, or extended relatives.

Mexico's national law for victims of crimes and human rights abuses includes a specific reference to people with disabilities by requiring a differentiated approach that takes disability into account in all services and actions.¹³

However, Mexico's national law to protect women against violence, a key piece of legislation, does not include specific reference to women with disabilities or accessibility and accommodations for women with disabilities.¹⁴ In November 2021, Mexico's Senate approved amendments to the law to include such standards. Congress' lower house still must vote on the amendments for them to become law. The timeline for this vote is not clear.

The National Criminal Procedure Code requires law enforcement officials at all levels to provide "reasonable procedural accommodation" for people with disabilities who may require them in order to participate in law enforcement proceedings.¹⁵ This legislation can be misleading because it conflates reasonable and procedural accommodations.

Interviews with prosecutors and experts involved in the training of law enforcement officials on disability rights revealed that many prosecutors have limited understanding of the scope and nature of procedural accommodations for people with disabilities during proceedings, as guaranteed under the criminal procedure code. Officials emphasized that sign language interpreters were used as a reasonable accommodation in their work with victims. Few had experience with other types of accommodations and had difficulty describing accommodations available to them to implement.

We ask the Committee to consider asking the following questions during its interactive dialogue with the Mexican government:

- What actions have the federal and state governments taken to ensure people with disabilities who allegedly have been victims of violence can report crimes in accessible facilities and formats?
- What actions have the federal and state governments taken to ensure people with disabilities have access to protective measures, including shelters for survivors of family violence, and to participation in investigations and judicial proceedings on an equal basis with others?

We ask the Committee to consider including these recommendations in its concluding observations on Mexico:

- State and federal prosecutors' offices should adopt general directives to ensure people with disabilities, family members, or service providers can file complaints about alleged violence without fear of retaliation against themselves or the victims;
- State and federal governments should ensure accessible protection measures, including shelters, for all people with disabilities, including for those who require personal support

¹³ General Victims Act, published in the official gazette on January 9, 2013.

¹⁴ General Act to Ensure Women a Life Free of Violence. February 1, 2007.

¹⁵ National Criminal Procedure Code, art. 10.

to live independently from alleged perpetrators, and create a time-bound plan to ensure accessibility of prosecutorial buildings, information, communications, and services for people with disabilities;

- Lawmakers should amend the General Act to Ensure Women a Life Free of Violence to establish specific standards to support women with disabilities, including support systems that include personal assistance for those who require it;
- The government should create systems, including shelters and services, that are accessible to men survivors of family violence.

3. Lack of Support for Independent Living in the Community and Family Violence

Most people with disabilities interviewed in our research did not have their own resources that could enable them to leave an abusive situation. The Mexican federal government and governments in the states where Human Rights Watch conducted research have yet to develop comprehensive programs and policies to enable people with disabilities to live independently and be included in the community.

For people with disabilities, the consequence of a high level of dependency on their families for economic and other types of support can lead to a higher risk of abuse. Some state laws require families to support their relatives with disabilities, deflecting the state's responsibility to guarantee people with disabilities' right to live independently, including where and with whom. Policies and laws that fail to ensure people with disabilities can live independently can place people with disabilities at a greater risk of being trapped in situations of violence and neglect.

Federal and state policies in Mexico to support people with disabilities have mainly consisted of financial pensions for people with permanent disabilities. The federal government began to issue disability pensions in February 2019 to eventually reach 1 million people, prioritizing children and young people, as well as adults in areas of high urban poverty and in indigenous communities. While pensions can be an important element of support for independent living, pensions alone are insufficient. Often people with disabilities do not receive government pensions directly; family members receive them in their place. In some cases, when individuals did receive a state pension directly or had other funds, their relatives controlled these resources.

We ask the Committee to consider asking the following question during its interactive dialogue with the Mexican government:

- What actions has the government has taken, beyond the disability pension program adopted in 2018, to ensure people with disabilities are able to live independently and be included in the community on an equal basis with others, including having access to personal assistants that act under the direction of the person concerned, as well as to other community-based services?

We ask the Committee to consider including these recommendations in its concluding observations on Mexico:

- Amend all relevant state and federal legislation, including the General Law for Inclusion of People with Disabilities, to clarify and specify the obligations of federal, state, and municipal governments to ensure people with disabilities can enjoy the right to live independently and be included in the community by:
 - Ensuring access to individualized support services, including for people with high support requirements;
 - Creating time-bound plans to expand accessibility of services, including housing and public transportation.

4. Lack of Disaggregated Data on People with Disabilities who are Victims of Family Violence

National and state officials do not systematically collect information that could assist them in identifying and effectively prosecuting crimes against people with disabilities.

Mexico has experienced high rates of all forms of violence since the 1990s. Most of it is unreported to authorities. There are several state statistical instruments measuring violence and victimization in Mexico, including the National Survey on Victimization and Perception of Insecurity (*Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública, ENVIPE*), a collaboration of the United Nations Office on Drugs and Crime and Mexico's National Institute for Statistics and Geography (INEGI). ENVIPE records the number of all types of crimes committed across Mexico in a given year. The survey does not include any information about victims with disabilities or who may have acquired a disability as a result of violence.¹⁶

The National Survey on the Dynamics of Relationships in the Household (*Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares, ENDIREH*) includes data on family violence against women. It covers psychological, emotional, physical, sexual, and economic violence. This survey does not include girls younger than 15, except when they are victims of sexual violence. The survey does not collect data on whether victims have disabilities.¹⁷ The national survey does not cover family violence against men and boys, nor is there a separate survey that does so.

In 2021, in a positive development, the INEGI made a call for public input on a draft proposal establishing guidelines to collect disability-related data. However, the proposal specified that inclusion of disability in a particular survey would be dependent on resources. Human Rights Watch and organizations of persons with disabilities in Mexico expressed concern that disability-related questions should be included in all relevant surveys consistent with Mexico's obligations under the CRPD on data collection, including for the purposes of effective policy making.

We ask the Committee to consider asking the following question during its interactive dialogue with the Mexican government:

¹⁶ "National Survey on Victimization and Perception of Public Security (ENVIPE) 2019," ("Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública"), 2019, https://www.inegi.org.mx/contenidos/programas/envipe/2019/doc/envipe2019_presentacion_nacional.pdf.

¹⁷ The survey includes women above 60. "National Survey on the Dynamics of Relationships in the Household (ENDIREH) 2016," (*Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares*), 2016, https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016_presentacion_ejecutiva.pdf.

- What actions has the government taken to systematically collect disaggregated information on violence against people with disabilities, including women, in all relevant national surveys?

We ask the Committee to consider including these recommendations in its concluding observations on Mexico:

- Collect disaggregated data by gender and age on violence against people with disabilities, including identifying those who acquired disabilities as a result of family violence or other forms of violence. This should be accomplished through the already existing National Surveys to collect data on family violence and victims, and through complementary studies focusing on family violence against people with disabilities.
- Create a general obligation for all government entities responsible for collecting data, including INEGI, to include disaggregated information, when relevant and pertinent, about people with disabilities, without conditioning national surveys to budgetary constraints.

5. Informed Consent and Medical Treatment

Mexico’s 1984 General Health Law (GHL) allows the use of forced treatment of persons with disabilities and involuntary admission to psychiatric hospitals for medical treatment.¹⁸

Involuntary admission to psychiatric hospitals is allowed for persons who are deemed to have “mental or behavior disorders,” when they are considered to be “incapable” or at the request of a family member, guardian, legal representative, or any other interested person when none of the former are available, and a certified physician determines there is a serious mental disorder and the person’s behavior “represents a serious and immediate danger for self and others.”¹⁹

The GHL also guarantees the right to informed consent for medical treatment. However, it also allows medical staff to deliver forced medical treatment that they determine to be “the best treatment indicated to treat the patient,” in cases of involuntary admission to a psychiatric hospital²⁰, thereby undermining the ability of individuals with actual or perceived disabilities to give their informed consent to medical treatment.

In 2021 Mexico’s Senate passed reforms to the General Health Act.²¹ They have yet to be approved by the lower house of Congress. The proposed reforms create important, rights-respecting amendments including a stronger provision on informed consent and legalizing advanced directives for health treatment. However, one of the provisions in the reform would allow medical treatment to be administered without consent even in non-emergency situations to people with an actual or perceived disability whom medical staff believe are unable to make

¹⁸ General Health Law of 1984, arts. 74 bis, IV, 75.

¹⁹ *Ibid.*, arts 74 bis, IV, 75.

²⁰ *Ibid.*, arts 74 bis, III.

²¹ Reform to the General Health Law, December 9, 2021. https://www.senado.gob.mx/64/gaceta_del_senado/documento/122558

decisions and give informed consent.²² In turn, it is possible that this provision would create a loophole or exception to a separate provision barring involuntary psychiatric internment.

We ask the Committee to consider including this recommendation in its concluding observations on Mexico:

- The government and Congress should work to harmonize the General Law on Health with the CRPD, including through amendments to the current draft under consideration that make it consistent with the CRPD, including by providing that medical treatment and hospitalization require the consent of the person with a disability, with the sole exception for emergencies when the health service provider needs to act immediately to preserve the life or health of the user, if the user cannot express consent by any means, even with supported decision making and reasonable accommodation.
- Recognize involuntary hospitalization based on the existence of a disability as a form of discrimination and that it can be a form of arbitrary detention.
- Progressively develop voluntary and accessible community-based support and services, including access to mental health services, in consultation with organizations of persons with disabilities. This should include development of psychosocial support services and integration of mental health services in the primary healthcare system.

6. Shackling of Persons with Psychosocial Disabilities

People with psychosocial disabilities in Mexico can be chained or confined in small spaces, in homes or institutions, sometimes for years at a time.²³ Many are held in sheds, cages, or animal shelters and are forced to eat, sleep, urinate, and defecate in the same tiny area. This inhumane practice—called “shackling”—exists due to inadequate support as well as widespread beliefs that stigmatize people with psychosocial disabilities.²⁴

Officials from the Office of the Prosecutor for Protection of People with Disabilities in Mexico told Human Rights Watch: “Families tie them [people with psychosocial disabilities] up regularly. We can tell by the physical signs on their bodies. They have scars.”²⁵

People with disabilities arbitrarily detained in government or private institutions can also be subjected to shackling. Felipe Orozco, a 41-year-old man, told Human Rights Watch he had been hospitalized five times because he had a mental health condition. He said that on one occasion in 2018 mental health professionals from the “Dr. Rafael Serrano” psychiatric hospital in Puebla shackled him naked with a padlock during the nights for two-and-a-half weeks, and he was

²² *Ibid.*, art 51. https://infosen.senado.gob.mx/sgsp/gaceta/65/1/2021-12-09-1/assets/documentos/Reservas_Sen_Mancera_PRD_Ley_General_de_Salud.pdf

²³ Human Rights Watch, *Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide*, October 6, 2020, https://www.hrw.org/sites/default/files/media_2020/10/global_shackling1020_web_2.pdf, pp. 9, 34, 39, 43.

²⁴ Human Rights Watch, *Living in Chains*, p. 3.

²⁵ Human Rights Watch interviews with three officials from the Nuevo León Integral System for the Development of the Family (DIF) Office of the Prosecutor for Protection of People with Disabilities, Monterrey, Mexico, April 11, 2019.

forced to defecate and urinate in his bed. “I was fearful that someone would attack me during the nights, without being able to defend myself because of being shackled.”²⁶

We ask the Committee to consider asking the following questions during its interactive dialogue with the Mexican government:

- What steps has the government taken to eliminate the practice of shackling of people with psychosocial disabilities?
- What steps has the government taken to develop adequate, quality, and voluntary community-based support and mental health services?

We ask the Committee to consider including these recommendations in its concluding observations on Mexico:

- Ban shackling in law and policy of people with real or perceived mental health conditions and develop adequate, quality, and voluntary community-based support mental health services.
- Conduct regular, unannounced monitoring visits to government and private institutions where people with psychosocial disabilities live, with unhindered and confidential interaction with both staff and patients, with a goal of stopping chaining and other abuses. The findings of the monitoring visits, redacted to protect privacy rights, should be publicly reported.

²⁶ Human Rights Watch teleconference interview with Felipe Orozco, man with a psychosocial disability, August 4, 2020. Carlos Rios Espinosa, “Coercive Measures in Mental Health Need to Stop,” *Animal Politico*, November 27, 2020, <https://www.hrw.org/news/2020/12/01/coercive-measures-mental-health-need-stop>.